



Judiciary Appropriations Committee

Tuesday, April 4, 2006

4:00 p.m. or Upon Adjournment of the Fiscal Council

28 House Office Building

ACTION PACKET

COMMITTEE MEETING REPORT

Judiciary Appropriations Committee

4/4/2006 4:00:00PM or Upon Adjournment of the Fiscal Council

Location: 28 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Jeffrey Kottkamp (Chair)	X		
Edward Bullard	X		
Mark Mahon			X
Juan-Carlos Planas	X		
Dennis Ross			X
John Seller	X		
Totals:	4	0	2

Committee meeting was reported out: Tuesday, April 04, 2006 6:26:51PM

COMMITTEE MEETING REPORT

Judiciary Appropriations Committee

4/4/2006 4:00:00PM or Upon Adjournment of the Fiscal Council

Location: 28 HOB

HB 65 CS : Foreclosure Proceedings

☒ Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Edward Bullard	X				
Mark Mahon				X	
Juan-Carlos Planas	X				
Dennis Ross			X		
John Seiler	X				
Jeffrey Kottkamp (Chair)	X				
Total Yeas: 4		Total Nays: 0			

Committee meeting was reported out: Tuesday, April 04, 2006 6:26:51PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 0065 CS

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	<u>X</u>	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Council/Committee hearing bill: Judiciary Appropriations

2
3 Representative(s) Porth offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (1) through (7) of section 45.031,
8 Florida Statutes, are amended to read:

9 45.031 Judicial sales procedure.--In any sale of real or
10 personal property under an order or judgment, the procedures set
11 forth in ss. 45.031-45.035 following procedure may be followed
12 as an alternative to any other sale procedure if so ordered by
13 the court:

14 (1) FINAL JUDGMENT SALE BY CLERK.--In the order or final
15 judgment, the court shall direct the clerk to sell the property
16 at public sale on a specified day that shall be not less than 20
17 days or more than 35 days after the date thereof, on terms and
18 conditions specified in the order or judgment. A sale may be
19 held more than 35 days after the date of final judgment or order
20 if the plaintiff or plaintiff's attorney consents to such time.
21 The final judgment shall contain the following statement in
22 conspicuous type:

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23
24 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
25 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
26 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
27 FINAL JUDGMENT.

28
29 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
30 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK
31 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A
32 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

33
34 IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS
35 YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER
36 REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO
37 ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE
38 ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT
39 INFORMATION FOR APPLICABLE COURT] WITHIN TEN (10) DAYS AFTER THE
40 SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE
41 SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

42
43 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
44 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
45 PAPERS YOU ARE REQUIRED TO SIGN. ASK SOMEONE ELSE, PREFERABLY AN
46 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,
47 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT
48 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR
49 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO
50 PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL
51 AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF YOU QUALIFY
52 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY
53 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR

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SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL
OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS
SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

A copy of the final judgment shall be furnished by the clerk by
first class mail to the last known address of every party in the
action or to the attorney of record for such party. Any
irregularity in such mailing, including the failure to include
this statement in any final judgment or order, shall not affect
the validity or finality of the final judgment or order or any
sale held pursuant thereto. Any sale held more than 35 days
after the final judgment or order shall not affect the validity
or finality of the final judgment or order or any sale held
pursuant thereto.

(2) PUBLICATION OF SALE.--Notice of sale shall be published
once a week for 2 consecutive weeks in a newspaper of general
circulation, as defined in chapter 50, published in the county
where the sale is to be held. The second publication shall be at
least 5 days before the sale. The notice shall contain:

- (a) A description of the property to be sold.
- (b) The time and place of sale.
- (c) A statement that the sale will be made pursuant to the
order or final judgment.
- (d) The caption of the action.
- (e) A statement that any person claiming an interest in
the surplus from the sale, if any, other than the property owner
as of the date of the lis pendens, must file a claim within 60
days after the sale.

- (f) The name of the clerk making the sale.

~~The clerk shall receive a service charge of up to \$60 for~~

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85 ~~services in making, recording, and certifying the sale and title~~
86 ~~that shall be assessed as costs.~~ The court, in its discretion,
87 may enlarge the time of the sale. Notice of the changed time of
88 sale shall be published as provided herein.

89 (3) CONDUCT OF SALE; ~~(2)~~ DEPOSIT REQUIRED.--The sale shall
90 be conducted at public auction at the time and place set forth
91 in the final judgment. The clerk shall receive the service
92 charge set in s. 45.035 for services in making, recording, and
93 certifying the sale and title that shall be assessed as costs.

94 At the time of the sale, the successful high bidder shall post
95 with the clerk a deposit equal to 5 percent of the final bid.
96 The deposit shall be applied to the sale price at the time of
97 payment. If final payment is not made within the prescribed
98 period, the clerk shall readvertise the sale as provided in this
99 section and pay all costs of the sale from the deposit. Any
100 remaining funds shall be applied toward the judgment.

101 (4) ~~(3)~~ CERTIFICATION OF SALE.--After a sale of the
102 property the clerk shall promptly file a certificate of sale and
103 serve a copy of it on each party ~~not in default~~ in substantially
104 the following form:

105
106 (Caption of Action)

107
108 CERTIFICATE OF SALE

109
110 The undersigned clerk of the court certifies that notice of
111 public sale of the property described in the order or final
112 judgment was published in _____, a newspaper circulated in _____
113 County, Florida, in the manner shown by the proof of publication
114 attached, and on _____, (year) , the property was offered for
115 public sale to the highest and best bidder for cash. The highest

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and best bid received for the property in the amount of \$
was submitted by _____, to whom the property was sold. The
proceeds of the sale are retained for distribution in accordance
with the order or final judgment or law. WITNESS my hand and the
seal of this court on _____, (year) .

(Clerk)

By (Deputy Clerk)

(5) ~~(4)~~ CERTIFICATE OF TITLE.--If no objections to the
sale are filed within 10 days after filing the certificate of
sale, the clerk shall file a certificate of title and serve a
copy of it on each party ~~not in default~~ in substantially the
following form:

(Caption of Action)

CERTIFICATE OF TITLE

The undersigned clerk of the court certifies that he or she
executed and filed a certificate of sale in this action on
_____, (year) , for the property described herein and that no
objections to the sale have been filed within the time allowed
for filing objections.

The following property in _____ County, Florida:
(description)
was sold to .

WITNESS my hand and the seal of the court on _____, (year) .
(Clerk)

By (Deputy Clerk)

(6) ~~(5)~~ CONFIRMATION; RECORDING.--When the certificate of
title is filed the sale shall stand confirmed, and title to the

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property shall pass to the purchaser named in the certificate without the necessity of any further proceedings or instruments.

~~(6) RECORDING.~~ The certificate of title shall be recorded by the clerk.

(7) DISBURSEMENTS OF PROCEEDS.--

(a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party ~~not in default~~, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and Employment Security was named as a defendant while the Department of Revenue was providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316⁷.

(b) The Certificate of Disbursements shall be in substantially the following form:

(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name	Amount
------	--------

Total Disbursements:	\$ _____
----------------------	----------

Surplus Retained by Clerk (if any):	\$ _____
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179 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
180 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60
181 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT
182 BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY THE
183 OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE
184 SURPLUS.

185
186 WITNESS my hand and the seal of the court on _____, (year) .
187 (Clerk)
188 By (Deputy Clerk)

189
190 (c) If no objections to the report are served within 10
191 days after it is filed, the disbursements by the clerk shall
192 stand approved as reported. If timely objections to the report
193 are served, they shall be heard by the court. Service of
194 objections to the report does not affect or cloud the title of
195 the purchaser of the property in any manner.

196 (d) If there are funds remaining after payment of all
197 disbursements required by the final judgment of foreclosure and
198 shown on the certificate of disbursements, the surplus shall be
199 distributed as provided for in ss. 45.032-45.035.

200 Section 2. Section 45.032, Florida Statutes, is created to
201 read:

202 45.032 Disbursement of surplus funds after judicial
203 sale.--

204 (1) For purposes of ss. 45.031-45.035, the term:

205 (a) "Owner of record" means the person or persons who
206 appear to be the owner of the property that is the subject of
207 the foreclosure proceeding on the date of the filing of the lis
208 pendens. In determining an owner of record, one need not perform

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209 a title search and examination but may rely on the plaintiff's
210 allegation of ownership in the complaint when determining the
211 owner of record.

212 (b) "Subordinate lienholder" means the holder of a
213 subordinate lien shown on the face of the pleadings as an
214 encumbrance on the property. The lien being foreclosed on is
215 not a subordinate lien. A subordinate lienholder includes, but
216 is not limited to, a subordinate mortgage, judgment, assessment
217 lien, or construction lien. However, the holder of a
218 subordinate lien shall not be deemed a subordinate lienholder if
219 the holder was paid in full from the proceeds of the sale.

220 (c) "Surplus funds" or "surplus" means the funds remaining
221 after payment of all disbursements required by the final
222 judgment of foreclosure and shown on the certificate of
223 disbursements.

224 (d) "Surplus trustee" means a person qualifying as a
225 surplus trustee pursuant to s. 45.034.

226 (2) There is established a rebuttable legal presumption
227 that the owner of record on the date of the filing of a lis
228 pendens is the person entitled to surplus funds after payment of
229 subordinate lienholders who have timely filed a claim. A person
230 claiming a legal right to the surplus as an assignee of the
231 rights of the owner of record must prove to the court that the
232 person is entitled to the funds. At any hearing regarding such
233 entitlement, the court shall consider the factors set forth in
234 s. 45.033 in determining whether an assignment is sufficient to
235 overcome the presumption. The Legislature intends hereby to
236 abrogate the common law rule that surplus proceeds in a
237 foreclosure case are the property of the owner of the property
238 on the date of the foreclosure sale.

239 (3) During the 60 days after the clerk issues the

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Certificate of Disbursements, the clerk shall hold the surplus pending a court order.

(a) If the owner of record claims the surplus during the 60 day period, and there is no subordinate lienholder, the court shall order the clerk to deduct any applicable service charges from the surplus and pay the remainder to the owner of record. The clerk may establish a reasonable requirement that the owner of record prove his or her identity before receiving the disbursement. The clerk may assist an owner of record in making a claim. An owner of record may use the following form in making a claim:

(Caption of Action)

OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

State of _____

County of _____

Under penalty of perjury, I (we) hereby certify that:

1. I was (we were) the owner of the following described real property in _____ County, Florida, prior to the foreclosure sale and as of the date of the filing of the lis pendens:

(Legal description of real property)

2. I (we) do not owe any money on any mortgage on the property that was foreclosed other than the one that was paid off by the foreclosure.

3. I (we) do not owe any money that is the subject of an unpaid judgment, condominium lien, cooperative lien, or homeowner's association.

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271 4. I am (we are) not currently in bankruptcy.

272 5. I (we) have not sold or assigned my (our) right to the
273 mortgage surplus.

274 6. My (our) new address is: _____.

275 7. If there is more than one owner entitled to the surplus,
276 we have agreed that the surplus should be paid _____ jointly, or
277 to : _____, at the following address: _____.

278 8. I (WE) UNDERSTAND THAT I (WE) ARE NOT REQUIRED TO HAVE A
279 LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE TO
280 ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY
281 MONEY TO WHICH I (WE) MAY BE ENTITLED.

282 8. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER
283 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE
284 PROSECUTED CRIMINALLY FOR PERJURY.

285
286 (Signatures)

287
288 Sworn to (or affirmed) and subscribed before me this _____
289 day of _____, (year) _____, by _____ (name of person making statement)

290
291 (Signature of Notary Public - State of Florida)

292 (Print, Type, or Stamp Commissioned Name of Notary Public)

293
294 Personally Known _____ OR Produced Identification _____

295
296 Type of Identification Produced _____

297
298 (b) If any person other than the owner of record claims an
299 interest in the proceeds during the 60 days, or if the owner of
300 record files a claim for the surplus but acknowledges that one
301 or more other persons may be entitled to part of all of the

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surplus, the court shall set an evidentiary hearing to determine
entitlement to the surplus. At the evidentiary hearing, an
equitee assignee has the burden of proving that he or she is
entitled to some or all of the surplus funds. The court may
grant summary judgment to a subordinate lienholder prior to or
at the evidentiary hearing. The court shall consider the
factors in s. 45.033 when hearing a claim that any person other
than a subordinate lienholder or the owner of record is entitled
to the surplus funds.

(c) If no claim is filed in the 60 days, the clerk shall
appoint a Surplus Trustee from a list of qualified Surplus
Trustees as authorized in s. 45.034. Upon appointment, the clerk
shall prepare a Notice of Appointment of Surplus Trustee, and
shall furnish a copy to the Surplus Trustee. The form of the
notice may be as follows:

(Caption of Action)

NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

The undersigned clerk of the court certifies that he or she
disbursed the proceeds received from the sale of the property as
provided in the order or final judgment to the persons named in
the certificate of disbursements, and that surplus funds of
\$ _____ remain and are subject to disbursement to the owner
of record. You have been appointed as Surplus Trustee for the
purpose of finding the owner or record in order for the clerk to
disburse the surplus, after deducting costs, to the owner of
record.

WITNESS my hand and the seal of the court on _____, (year) .

(Clerk)

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By (Deputy Clerk)

(4) If the Surplus Trustee is unable to locate the owner of record entitled to the surplus within one year of appointment, the appointment shall terminate and the clerk shall notify the Surplus Trustee that his or her appointment was terminated. Thirty days after termination of the appointment of the surplus trustee, the clerk shall treat the remaining funds as unclaimed property, to be deposited with the Chief Financial Officer pursuant to chapter 717.

(5) Proceedings regarding surplus funds in a foreclosure case do not affect or cloud the title of the purchaser at the foreclosure sale of the property in any manner.

Section 3. Section 45.033, Florida Statutes, is created to read:

45.033 Sale or assignment of rights to surplus funds in a property subject to foreclosure.--

(1) There is established a rebuttable legal presumption that the owner of record on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove entitlement to the surplus funds pursuant to this section. The legislature intends hereby to abrogate the common law rule that surplus proceeds in a foreclosure case are the property of the owner of the property on the date of the foreclosure sale.

(2) The presumption may be rebutted only by:

(a) The grantee or assignee of a voluntary transfer or assignment proving the right to collect the surplus funds or any portion or percentage of the surplus funds by proving that the

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transfer or assignment qualifies as required by this section; or

(b) The grantee or assignee is a grantee or assignee by virtue of an involuntary transfer or assignment of the right to collect the surplus. An involuntary transfer or assignment may be as a result of inheritance or as a result of the appointment of a guardian.

(3) A voluntary transfer or assignment shall be a transfer or assignment qualified under this subsection, thereby entitling the transferee or assignee to the surplus funds, or a portion or percentage of the surplus funds, if:

(a) The transfer or assignment is in writing, and the instrument:

1. If the instrument was executed prior to the foreclosure sale, the instrument includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, and the approximate amount of any equity in the property. If the instrument was executed after the foreclosure sale, the instrument must also specify the foreclosure sale price and the amount of the surplus.

2. Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.

3. Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.

(b) The transfer or assignment is filed with the court on or before 60 days after the filing of the Certificate of Disbursements.

(c) There are funds available to pay the transfer or

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395 assignment after payment of timely filed claims of subordinate
396 lienholders.

397 (d) The transferor or assignee is qualified as a surplus
398 trustee, or could qualify as a surplus trustee, pursuant to s.
399 45.034.

400 (4) The court shall honor a transfer or assignment that
401 complies with the requirements set forth in subsection (3), in
402 which case the court shall order to the clerk to pay the
403 transferor or assignee from the surplus.

404 (5) If the court finds that a voluntary transfer or
405 assignment does not qualify under subsection (3), but that it
406 was procured in good faith and with no intent to defraud the
407 transferor or assignor, the court may order the clerk to pay
408 claim of the transferee or assignee after payment of timely
409 filed claims of subordinate lienholders.

410 (6) If a voluntary transfer or assignment of the surplus
411 is set aside, the owner of record shall be entitled to payment
412 of the surplus funds after payment of timely filed claims of
413 subordinate lienholders; but the transferee or assignee may, in
414 a separate proceeding, seek repayment of any consideration paid
415 for the transfer or assignment.

416 (7) This section does not apply to a deed, mortgage, or
417 deed in lieu of foreclosure unless a person other than the owner
418 of record is claiming that a deed or mortgage entitles the
419 person to surplus funds. Nothing in this section affects the
420 title or marketability of the real property that is the subject
421 of the deed or other instrument. Nothing in this section affects
422 the validity of a lien evidenced by a mortgage.

423 Section 4. Section 45.034, Florida Statutes, is created to
424 read:

425 45.034 Qualifications and appointment of a surplus trustee

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in foreclosure actions.--

(1) A surplus trustee is a third party trustee approved, pursuant to this section, by the Department of Financial Services. A surplus trustee must be willing to accept cases on a statewide basis; however, a surplus trustee may employ subcontractors that are not qualified as a surplus trustee provided that the surplus trustee remains primarily responsible for the duties set forth in this section.

(2) A surplus trustee is an entity that holds and administers the surplus proceeds from a foreclosure pursuant to ss. 45.031-45.035.

(3) A surplus trustee must apply for certification with the Department of Financial Services. The application must contain:

(a) The name and address of the entity and of one or more principals of the entity.

(b) A certificate of good standing from the Florida Secretary of State indicating that the entity is a Florida entity.

(c) A statement under oath by a principal of the entity certifying that the entity, or a principal of the entity, has a minimum of 12 months experience in the recovery of surplus funds in foreclosure actions.

(d) Proof that the entity hold a valid Class "A" private investigators license, pursuant to ch. 493.

(e) Proof that the entity carries a minimum of \$500,000 in liability insurance, cash reserves or bonding.

(f) A statement from an attorney licensed to practice in the state certifying that the attorney is a principal of the entity or is employed by the entity on a full-time basis, and that the attorney will supervise the management of the entity during its tenure as a surplus trustee.

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457 (g) A statement under oath by a principal of the entity
458 certifying that the principal understands his or her duty to
459 immediately notify the Department of Financial Services should,
460 in the future, ever fail to qualify as an entity entitled to be
461 a surplus trustee.

462 (h) A nonrefundable application fee of \$25.

463 (4) The Department of Financial Services shall certify any
464 surplus trustee that applies and qualifies. Certification shall
465 be on a calendar year basis. The Department of Financial
466 Services may renew a qualification upon receipt of the \$25 fee
467 and a statement under oath from a principal of the surplus
468 trustee certifying that the surplus trustee continues to qualify
469 under this section.

470 (5) The Department of Financial Services shall develop a
471 rotation system for assignment of cases to all qualified surplus
472 trustees.

473 (6) The primary duty of a surplus trustee is to locate the
474 owner of record within one year of appointment. Upon locating
475 the owner of record, the surplus trustee has the duty to file a
476 petition with the court on behalf of the owner of record seeking
477 disbursement of the surplus funds. If more than one person
478 appears to be the owner of record, the surplus trustee has the
479 duty to either obtain agreement between such persons as to the
480 payment of the surplus, or file an interpleader. Such
481 interpleader may be filed as part of the foreclosure case.

482 (7) A surplus trustee shall be entitled to the following
483 service charges and fees, which shall be disbursed by the clerk
484 and payable from the surplus:

485 (a) Upon obtaining a court order, a cost advance of 2% of
486 the surplus.

487 (b) Upon obtaining a court order disbursing the surplus to

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the owner of record, a service charge of 10% of the surplus.

Section 5. Section 46.035, Florida Statutes, is created to read:

45.035 Clerk's fees.--In addition to other fees or service charges authorized by law, the clerk shall receive service charges related to the judicial sales procedure set forth in ss. 45.031-45.035:

(1) The clerk shall receive a service charge of \$60 for services in making, recording, and certifying the sale and title, that shall be assessed as costs and that shall be advanced by the plaintiff before the sale.

(2) If there is a surplus resulting from the sale, the clerk may receive the following service charges, which shall be deducted from the surplus:

(a) The clerk may withhold the sum of \$25 from the surplus, which may only be used for purposes of educating the public as to the rights of homeowners regarding foreclosure proceedings.

(b) The clerk shall be entitled to a service charge of \$10 for notifying a surplus trustee of his or her selection.

(c) The clerk shall be entitled to a service charge of \$10 for each disbursement of surplus proceeds.

(d) The clerk shall be entitled to a service charge of \$10 for appointing a surplus trustee, furnishing the surplus trustee with a copy of the final judgment and the certificate of disbursements, and disbursing to the surplus trustee the trustee's cost advance.

Section 6. Section 50.031, Florida Statutes, is amended to read:

50.031 Newspapers in which legal notices and process may be published.--No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any

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519 kind, nature, character or description provided for under any
520 law of the state, whether heretofore or hereafter enacted, and
521 whether pertaining to constructive service, or the initiating,
522 assuming, reviewing, exercising or enforcing jurisdiction or
523 power, by any court in this state, or any notice of sale of
524 property, real or personal, for taxes, state, county or
525 municipal, or sheriff's, guardian's or administrator's or any
526 sale made pursuant to any judicial order, decree or statute or
527 any other publication or notice pertaining to any affairs of the
528 state, or any county, municipality or other political
529 subdivision thereof, shall be deemed to have been published in
530 accordance with the statutes providing for such publication,
531 unless for a county with less than a total population of
532 1,000,000 as reflected in the most recent Official Decennial
533 Census of the U.S. Census Bureau, as shown on the official
534 website of the U.S. Census Bureau, the same shall have been
535 published for the prescribed period of time required for such
536 publication, in a newspaper which at the time of such
537 publication shall have been in existence for 1 year and shall
538 have been entered as periodicals matter at a post office in the
539 county where published, or in a newspaper which is a direct
540 successor of a newspaper which together have been so published.
541 For counties with more than 1,000,000 total population as
542 reflected in the most recent Official Decennial Census of the
543 U.S. Census Bureau, as shown on the official website of the U.S.
544 Census Bureau, any notice of publication shall be deemed to have
545 been published in accordance with the statutes if the notice is
546 published in a newspaper that has been entered as a periodical
547 matter at a post office in the county where published and is
548 published a minimum of 5 days a week and has been in existence
549 and published a minimum of 5 days a week for 1 year or is a

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direct successor to a newspaper that has been in existence for 1
551 year that has published the newspaper a minimum of 5 days a
552 week. Provided, however, that nothing herein contained shall
553 apply where in any county there shall be no newspaper in
554 existence which shall have been published for the length of time
555 above prescribed. No legal publication of any kind, nature or
556 description, as herein defined, shall be valid or binding or
557 held to be in compliance with the statutes providing for such
558 publication unless the same shall have been published in
559 accordance with the provisions of this section. Proof of such
560 publication shall be made by uniform affidavit.

561 Section 7. Section 501.2078, Florida Statutes, is created
562 to read:

563 501.2078 Violations involving individual homeowners during
564 the course of residential foreclosure proceedings; civil
565 penalties.--

566 (1) As used in this section:

567 (a) "Homeowner" means any individual who is the owner of
568 real property subject to a residential foreclosure proceeding.

569 (b) "Residential foreclosure proceeding" means any action
570 in a court of this state in which a party seeks to foreclose on
571 a mortgage encumbering the mortgagor's primary dwelling.

572 (c) "Victimize" means any course of action intended to
573 dupe, swindle or cheat a homeowner subject to a residential
574 foreclosure proceeding. The factors that a court shall review
575 when determining whether a course of action is victimizing a
576 homeowner are:

577 1. The compensation received relative to the risk and the
578 amount of work involved.

579 2. The number of homeowners involved.

580 3. The relative bargaining position of the parties.

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581 4. The relative knowledge and sophistication of the
582 parties.

583 5. Representations made in the inducement.

584 6. The timing of the agreement.

585 (2) Any person, other than a financial institution as
586 defined in s. 655.005, who willfully uses, or has willfully
587 used, a method, act, or practice in violation of this part,
588 which method, act, or practice victimizes or attempts to
589 victimize homeowners during the course of a residential
590 foreclosure proceeding, and in committing such violation knew or
591 should have known that such conduct was unfair or deceptive, is
592 liable for a civil penalty of not more than \$15,000 for each
593 such violation.

594 (3) Any order of restitution or reimbursement based on a
595 violation of this part committed against a homeowner in a
596 residential foreclosure proceeding has priority over the
597 imposition of any civil penalty for such violation pursuant to
598 this section.

599 (4) Civil penalties collected pursuant to this section
600 shall be deposited into the Legal Affairs Revolving Trust Fund
601 of the Department of Legal Affairs and allocated solely to the
602 Department of Legal Affairs for the purpose of preparing and
603 distributing consumer education materials, programs, and
604 seminars to benefit homeowners in residential foreclosure
605 proceedings or to further enforcement efforts.

606 (5) This section does not apply to:

607 (a) The act of encumbering the dwelling subject to a
608 residential foreclosure proceeding with a substitute or
609 additional lien.

610 (b) A deed in lieu of foreclosure, a workout agreement, a
611 bankruptcy plan, or any other agreement between a foreclosing

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lender and a homeowner.

(c) A foreclosure sale, an eminent domain proceeding, a forfeiture, or any other legal process.

Section 8. Section 702.035, Florida Statutes, is amended to read:

702.035 Legal notice concerning foreclosure proceedings.--Whenever a legal advertisement, publication, or notice relating to a foreclosure proceeding is required to be placed in a newspaper, it is the responsibility of the petitioner or petitioner's attorney to place such advertisement, publication, or notice. The advertisement, publication, or notice shall be placed directly by the attorney for the petitioner, by the petitioner if acting pro se, or by the clerk of the court. Only the actual costs charged by the newspaper for the advertisement, publication, or notice may be charged as costs in the action.

Section 8. Section 8. Subsection (9) of section 201.02, Florida Statutes, is amended to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.

(9) A certificate of title issued by the clerk of court under s. 45.031(5)(4) in a judicial sale of real property under an order or final judgment issued pursuant to a foreclosure proceeding is subject to the tax imposed by subsection (1). However, the amount of the tax shall be computed based solely on the amount of the highest and best bid received for the property at the foreclosure sale. This subsection is intended to clarify existing law and shall be applied retroactively.

Section 9. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

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643 Remove the entire title and insert:
644 An act relating to foreclosure proceedings; amending s.
645 45.031, F.S.; adding required statement for inclusion into
646 a final judgment of foreclosure; requiring the clerk to
647 furnish a copy of the final judgment to parties; amending
648 information required to be in a notice of sale; amending
649 the form of a certificate of disbursements; creating s.
650 45.032, F.S.; providing definitions; establishing a
651 presumption of entitlement to surplus funds in certain
652 filings; providing for disbursement of surplus funds by
653 the clerk of court; giving foreclosed owner 60 days to
654 claim surplus; providing form for claim; providing that
655 persons other than foreclosed owner have 60 days to file a
656 claim or be barred; requiring evidentiary hearing;
657 providing for appointment of a surplus trustee; providing
658 time limits for surplus trustee; creating s. 45.033, F.S.;
659 providing requirements for a sale or assignment of rights
660 to surplus funds in a foreclosure proceeding; creating a
661 rebuttable presumption of entitlement to certain funds;
662 providing requirements for transfers or assignments in
663 rebuttal; providing for nonapplication to certain
664 instruments; specifying absence of effect on title or
665 marketability of certain property or validity of certain
666 liens; creating s. 45.034, F.S.; providing qualifications
667 of a surplus trustee; providing for appointment of a
668 surplus trustee; providing fees; creating s. 45.035, F.S.;
669 providing for clerk's fees in foreclosure actions;
670 amending s. 50.031, F.S.; requiring notices published in
671 counties over 1,000,000 in total population to be
672 published in daily newspapers; creating s. 501.2079, F.S.;
673 providing definitions; providing a civil penalty for

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675 knowingly using unfair or deceptive homeowner
676 victimization methods, acts, or practices in residential
677 foreclosure proceedings; specifying higher priority of an
678 order of restitution or reimbursement over imposition of a
679 civil penalty; providing for deposit of civil penalties
680 into the Legal Affairs Revolving Trust Fund of the
681 Department of Legal Affairs; allocating such funds for
682 certain purposes; providing exceptions; specifying
683 nonapplication to certain encumbrances; amending s.
684 702.035, F.S.; limiting costs chargeable in a foreclosure
685 proceeding; amending s. 201.02, F.S.; correcting a cross-
reference; providing an effective date.

COMMITTEE MEETING REPORT

Judiciary Appropriations Committee

4/4/2006 4:00:00PM or Upon Adjournment of the Fiscal Council

Location: 28 HOB

HB 391 CS : Community Associations

☒ Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Edward Bullard	X				
Mark Mahon				X	
Juan-Carlos Planas	X				
Dennis Ross			X		
John Seiler	X				
Jeffrey Kottkamp (Chair)	X				
Total Yeas: 4		Total Nays: 0			

Committee meeting was reported out: Tuesday, April 04, 2006 6:26:51PM

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Bill No. 391 CS

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	<input checked="" type="checkbox"/>	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Council/Committee hearing bill: Judiciary Appropriations
2 Representative(s) Domino offered the following:
3

4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 712.11, Florida Statutes, is created to
7 read:

8 712.11 Covenant revitalization.--A homeowners' association
9 not otherwise subject to chapter 720 may use the procedures set
10 forth in ss. 720.403-720.407 to revive covenants that have
11 lapsed under the terms of this chapter.

12 Section 2. Effective October 1, 2006, subsection (11) of
13 section 718.110, Florida Statutes, is amended to read:

14 718.110 Amendment of declaration; correction of error or
15 omission in declaration by circuit court.--

16 (11) The Legislature finds that the procurement of
17 mortgagee consent to amendments that do not affect the rights or
18 interests of mortgagees is an unreasonable and substantial
19 logistical and financial burden on the unit owners and that
20 there is a compelling state interest in enabling the members in
21 a condominium association to approve amendments to the
22 condominium documents through legal means. Accordingly, and

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notwithstanding any provision to the contrary contained in this section:

(a) As to any mortgage recorded on or after October 1, 2006, any provision in the declaration, articles of incorporation or bylaws that requires any declaration recorded after April 1, 1992, may not require the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to the declaration, articles of incorporation or bylaws, or for any other matter shall be enforceable only as unless the requirement is limited to the following matters amendments materially affecting the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and unless the requirement provides that such consent may not be unreasonably withheld. It shall be presumed that, except as to:

1. Those matters described in subsections (4) and (8), and

2. Amendments to the declaration, articles of incorporation or by-laws which adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before the effective date of this amendment, any existing provisions in the declaration, articles of incorporation or by-laws requiring mortgagee consent shall be enforceable.

(c) In securing consent or joinder the association shall be entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a

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55 recorded assignment or modification of the mortgage, which
56 recorded assignment or modification must reference the official
57 records book and page of which the original mortgage was
58 recorded. Once the association has identified the recorded
59 mortgages of record, the association shall request of each unit
60 owner whose unit is encumbered by a mortgage of record any
61 information the owner has in his or her possession regarding the
62 name and address of the person to whom mortgage payments are
63 currently being made. Notice shall be sent to such person if it
64 is in addition to the name and address of the mortgagee or
65 assignee of the mortgage as shown by the public record. The
66 association shall be deemed to have complied with this
67 requirement by making the written request of the unit owners
68 required hereunder. Any notices required to be sent to the
69 mortgagees hereunder shall be sent to all available addresses
70 provided to the association.

71 (d) Any notice to the mortgagees required hereunder may be
72 sent by a method that establishes proof of delivery, and any
73 mortgagee who fails to respond within sixty (60) days of the
74 date of mailing shall be deemed to have consented to the
75 amendment.

76 (e) For those amendments requiring mortgagee consent on or
77 after October 1, 2006, ~~do not materially affect the rights or~~
78 ~~interests of mortgagees.~~ in the event mortgagee consent is
79 provided other than by properly recorded joinder, such consent
80 shall be evidenced by affidavit of the association recorded in
81 the public records of the county where the declaration is
82 recorded. Any amendment adopted without the required consent of
83 a mortgagee shall be voidable only by a mortgagee who was
84 entitled to notice and an opportunity to consent. An action to
void an amendment shall be subject to the statute of limitations

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beginning five years from the date of discovery as to the amendments described in subparagraph (a)1. hereinabove and five (5) years from the date of recordation of the certificate of amendment for all other amendments. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.

Section 3. Paragraph (1) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.--

(2) REQUIRED PROVISIONS.--The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(1) Certificate of compliance.--There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code. Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered lifesafety system by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term "high-rise building" means a building that is greater

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than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2025 ~~2014~~.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail, hand deliver, or electronically transmit to each unit owner written notice at least 14 days prior to such membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote shall be mailed, hand delivered, or electronically transmitted to all unit owners. Evidence of compliance with this 30-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

2. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been

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147 undertaken, the per-unit cost of such work. The division shall
148 annually report to the Division of State Fire Marshal of the
149 Department of Financial Services the number of condominiums that
150 have elected to forego retrofitting.

151 Section 4. Section 718.114, Florida Statutes, is amended
152 to read:

153 718.114 Association powers.--An association has the power
154 to enter into agreements, to acquire leaseholds, memberships,
155 and other possessory or use interests in lands or facilities
156 such as country clubs, golf courses, marinas, and other
157 recreational facilities. It has this power whether or not the
158 lands or facilities are contiguous to the lands of the
159 condominium, if they are intended to provide enjoyment,
160 recreation, or other use or benefit to the unit owners. All of
161 these leaseholds, memberships, and other possessory or use
162 interests existing or created at the time of recording the
163 declaration must be stated and fully described in the
164 declaration. Subsequent to the recording of the declaration,
165 agreements acquiring these leaseholds, memberships, or other
166 possessory or use interests not entered into within 12 months
167 following the recording of the declaration shall be considered a
168 material alteration or substantial addition to the real property
169 that is association property, and the association may not
170 acquire or enter into agreements acquiring these leaseholds,
171 memberships, or other possessory or use interests except as
172 authorized by the declaration as provided in s. 718.113. The
173 declaration may provide that the rental, membership fees,
174 operations, replacements, and other expenses are common expenses
175 and may impose covenants and restrictions concerning their use
176 and may contain other provisions not inconsistent with this

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chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

Section 5. Subsections (1) and (2) of section 718.404, Florida Statutes, are amended to read:

718.404 Mixed-use condominiums.--When a condominium consists of both residential and commercial units, the following provisions shall apply:

(1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.

(2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

Section 6. Subsections (4) and (5) of section 720.302, Florida Statutes, are amended to read:

720.302 Purposes, scope, and application.--

(4) This chapter does not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721, or to any nonmandatory association formed under chapter 723, except to the extent that a provision of chapter 718, chapter 719, or chapter 721 is expressly incorporated into this chapter for the purpose of regulating homeowners' associations.

(5) Unless expressly stated to the contrary, corporations ~~not for profit~~ that operate residential homeowners' associations in this state shall be governed by and subject to chapter 607, if the association was incorporated thereunder, or to chapter

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208 | 617, if the association was incorporated thereunder, and this
209 | chapter. This subsection is intended to clarify existing law.

210 | Section 7. Paragraph (a) of subsection (2), and
211 | subsections (5), (6), and (7) of section 720.303, Florida
212 | Statutes, as amended by section 18 of chapter 2004-345 and
213 | section 135 of chapter 2005-2, Laws of Florida, are amended, and
214 | paragraph (d) is added to subsection (5) of that section, to
215 | read:

216 | 720.303 Association powers and duties; meetings of board;
217 | official records; budgets; financial reporting; association
218 | funds; recalls.--

219 | (2) BOARD MEETINGS.--

220 | (a) A meeting of the board of directors of an association
221 | occurs whenever a quorum of the board gathers to conduct
222 | association business. All meetings of the board must be open to
223 | all members except for meetings between the board and its
224 | attorney with respect to proposed or pending litigation where
225 | the contents of the discussion would otherwise be governed by
226 | the attorney-client privilege. The provisions of this subsection
227 | shall also apply to the meetings of any committee or other
228 | similar body when a final decision will be made regarding the
229 | expenditure of association funds and to meetings of any body
230 | vested with the power to approve or disapprove architectural
231 | decisions with respect to a specific parcel of residential
232 | property owned by a member of the community.

233 | (5) INSPECTION AND COPYING OF RECORDS.--The official
234 | records shall be maintained within the state and must be open to
235 | inspection and available for photocopying by members or their
236 | authorized agents at reasonable times and places within 10
237 | business days after receipt of a written request for access.
238 | This subsection may be complied with by having a copy of the

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official records available for inspection or copying in the community. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

(d) The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$50 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

(6) BUDGETS.--

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

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269 (b) In addition to annual operating expenses, the budget
270 may include reserve accounts for capital expenditures and
271 deferred maintenance for which the association is responsible to
272 the extent that the governing documents do not limit increases
273 in assessments, including reserves. If the budget of the
274 association includes reserve accounts, such reserves shall be
275 determined, maintained, and waived in the manner provided in
276 this subsection. Once an association provides for reserve
277 accounts in the budget, the association shall thereafter
278 determine, maintain, and waive reserves in compliance with the
279 provisions of this subsection.

280 (c) If the budget of the association does not provide for
281 reserve accounts governed by this subsection and the association
282 is responsible for the repair and maintenance of capital
283 improvements that may result in a special assessment if reserves
284 are not provided, each financial report for the preceding fiscal
285 year required by subsection (7) shall contain the following
286 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
287 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
288 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
289 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
290 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE
291 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
292 INTERESTS OF THE ASSOCIATION.

293 (d) An association shall be deemed to have provided for
294 reserve accounts when reserve accounts have been initially
295 established by the developer or when the membership of the
296 association affirmatively elects to provide for reserves. If
297 reserve accounts are not initially provided for by the
298 developer, the membership of the association may elect to do so
299 upon the affirmative approval of not less than a majority of the

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total voting interests of the association. Such approval may be
attained by vote of the members at a duly called meeting of the
membership or upon a written consent executed by not less than a
majority of the total voting interests in the community. The
approval action of the membership shall state that reserve
accounts shall be provided for in the budget and the approval
action of the membership shall designate the components for
which the reserve accounts are to be established. Upon approval
by the membership, the board of directors shall provide for the
required reserve accounts for inclusion in the budget in the
next fiscal year following the approval and in each year
thereafter. Once established as provided in this subsection, the
reserve accounts shall be funded or maintained or shall have
their funding waived in the manner provided in paragraph (f).

(e) The amount to be reserved in any account established
shall be computed by means of a formula that is based upon
estimated remaining useful life and estimated replacement cost
or deferred maintenance expense of each reserve item. The
association may adjust replacement reserve assessments annually
to take into account any changes in estimates of cost or useful
life of a reserve item.

(f) Once a reserve account or reserve accounts are
established, the membership of the association upon a majority
vote at a meeting at which a quorum is present may provide for
no reserves or less reserves than required by this section. If a
meeting of the unit owners has been called to determine whether
to waive or reduce the funding of reserves and no such result is
achieved or a quorum is not attained, the reserves as included
in the budget shall go into effect. After the turnover, the
developer may vote its voting interest to waive or reduce the
funding of reserves. Any vote taken pursuant to this subsection

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331 to waive or reduce reserves shall be applicable only to one
332 budget year.

333 (g) Funding formulas for reserves authorized by this
334 section shall be based on either a separate analysis of each of
335 the required assets or a pooled analysis of two or more of the
336 required assets.

337 1. If the association maintains separate reserve accounts
338 for each of the required assets, the amount of the contribution
339 to each reserve account shall be the sum of the following two
340 calculations:

341 a. The total amount necessary, if any, to bring a negative
342 component balance to zero; and

343 b. The total estimated deferred maintenance expense or
344 estimated replacement cost of the reserve component less the
345 estimated balance of the reserve component as of the beginning
346 of the period for which the budget will be in effect. The
347 remainder, if greater than zero, shall be divided by the
348 estimated remaining useful life of the component. The formula
349 may be adjusted each year for changes in estimates and deferred
350 maintenance performed during the year and may include factors
351 such as inflation and earnings on invested funds.

352 2. If the association maintains a pooled account of two or
353 more of the required reserve assets, the amount of the
354 contribution to the pooled reserve account as disclosed on the
355 proposed budget shall not be less than that required to ensure
356 that the balance on hand at the beginning of the period for
357 which the budget will go into effect plus the projected annual
358 cash inflows over the remaining estimated useful life of all of
359 the assets that make up the reserve pool are equal to or greater
360 than the projected annual cash outflows over the remaining
361 estimated useful lives of all of the assets that make up the

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reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

(h) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present. Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

(7) FINANCIAL REPORTING.--Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a ~~an annual~~ financial report for the preceding fiscal year. Within ~~21~~ 60 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, ~~else of the fiscal year.~~ the association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set

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393 of financial statements in accordance with generally accepted
394 accounting principles as adopted by the Board of Accountancy.
395 The financial statements shall be based upon the association's
396 total annual revenues, as follows:

397 1. An association with total annual revenues of \$100,000
398 or more, but less than \$200,000, shall prepare compiled
399 financial statements.

400 2. An association with total annual revenues of at least
401 \$200,000, but less than \$400,000, shall prepare reviewed
402 financial statements.

403 3. An association with total annual revenues of \$400,000
404 or more shall prepare audited financial statements.

405 (b)1. An association with total annual revenues of less
406 than \$100,000 shall prepare a report of cash receipts and
407 expenditures.

408 2. An association in a community of fewer than 50 parcels,
409 regardless of the association's annual revenues, may prepare a
410 report of cash receipts and expenditures in lieu of financial
411 statements required by paragraph (a) unless the governing
412 documents provide otherwise.

413 3. A report of cash receipts and disbursement must
414 disclose the amount of receipts by accounts and receipt
415 classifications and the amount of expenses by accounts and
416 expense classifications, including, but not limited to, the
417 following, as applicable: costs for security, professional, and
418 management fees and expenses; taxes; costs for recreation
419 facilities; expenses for refuse collection and utility services;
420 expenses for lawn care; costs for building maintenance and
421 repair; insurance costs; administration and salary expenses; and
422 reserves if maintained by the association.

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(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

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454 Section 8. Subsection (2) of section 720.303, Florida
455 Statutes, as amended by section 2 of chapter 2004-345 and
456 section 15 of chapter 2004-353, Laws of Florida, is repealed.

457 Section 9. Section 720.3035, Florida Statutes, is created
458 to read:

459 720.3035 Architectural control covenants; parcel owner
460 improvements; rights and privileges.--

461 (1) The authority of an association or any architectural,
462 construction improvement, or other such similar committee of an
463 association to review and approve plans and specifications for
464 the location, size, type, or appearance of any structure or
465 other improvement on a parcel, or to enforce standards for the
466 external appearance of any structure or improvement located on a
467 parcel, shall only be permitted to the extent that the authority
468 is specifically stated or reasonably inferred as to such
469 location, size, type, or appearance in the declaration of
470 covenants or other published guidelines and standards authorized
471 by the declaration of covenants.

472 (2) If the declaration of covenants or other published
473 guidelines and standards authorized by the declaration of
474 covenants provides options for the use of material, the size of
475 the structure or improvement, the design of the structure or
476 improvement, or the location of the structure or improvement on
477 the parcel, neither the association nor any architectural,
478 construction improvement, or other such similar committee of the
479 association shall restrict the right of a parcel owner to select
480 from the options provided in the declaration of covenants or
481 other published guidelines and standards authorized by the
482 declaration of covenants.

483 (3) Unless otherwise specifically stated in the
484 declaration of covenants or other published guidelines and

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standards authorized by the declaration of covenants, each
486 parcel shall be deemed to have only one front for purposes of
487 determining the required front setback even if the parcel is
488 bounded by a roadway or other easement on more than one side.
489 When the declaration of covenants or other published guidelines
490 and standards authorized by the declaration of covenants does
491 not provide for specific setback limitations, the applicable
492 county or municipal setback limitations shall apply, and neither
493 the association nor any architectural, construction improvement,
494 or other such similar committee of the association shall enforce
495 or attempt to enforce any setback limitation that is
496 inconsistent with the applicable county or municipal standard or
497 standards.

498 (4) Each parcel owner shall be entitled to the rights and
499 privileges set forth in the declaration of covenants or other
500 published guidelines and standards authorized by the declaration
501 of covenants concerning the use of the parcel, and the
502 construction of permitted structures and improvements on the
503 parcel and such rights and privileges shall not be unreasonably
504 infringed upon or impaired by the association or any
505 architectural, construction improvement, or other such similar
506 committee of the association. If the association or any
507 architectural, construction improvement, or other such similar
508 committee of the association should knowingly and willfully
509 infringe upon or impair the rights and privileges set forth in
510 the declaration of covenants or other published guidelines and
511 standards authorized by the declaration of covenants, the
512 adversely affected parcel owner shall be entitled to recover
513 damages caused by such infringement or impairment, including any
514 costs and reasonable attorney's fees incurred in preserving or
5 restoring the rights and privileges of the parcel owner set

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516 forth in the declaration of covenants or other published
517 guidelines and standards authorized by the declaration of
518 covenants.

519 (5) Neither the association nor any architectural,
520 construction improvement, or other such similar committee of the
521 association shall enforce any policy or restriction that is
522 inconsistent with the rights and privileges of a parcel owner
523 set forth in the declaration of covenants or other published
524 guidelines and standards authorized by the declaration of
525 covenants, whether uniformly applied or not. Neither the
526 association nor any architectural, construction improvement, or
527 other such similar committee of the association may rely upon a
528 policy or restriction that is inconsistent with the declaration
529 of covenants or other published guidelines and standards
530 authorized by the declaration of covenants, whether uniformly
531 applied or not, in defense of any action taken in the name of or
532 on behalf of the association against a parcel owner.

533 Section 10. Subsection (1) of section 720.305, Florida
534 Statutes, is amended to read:

535 720.305 Obligations of members; remedies at law or in
536 equity; levy of fines and suspension of use rights; failure to
537 fill sufficient number of vacancies on board of directors to
538 constitute a quorum; appointment of receiver upon petition of
539 any member.--

540 (1) Each member and the member's tenants, guests, and
541 invitees, and each association, are governed by, and must comply
542 with, this chapter, the governing documents of the community,
543 and the rules of the association. Actions at law or in equity,
544 or both, to redress alleged failure or refusal to comply with
545 these provisions may be brought by the association or by any
546 member against:

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(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

Section 11. Paragraph (c) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.--

(1) QUORUM; AMENDMENTS.--

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section,

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578 a change in quorum requirements is not an alteration of voting
579 interests. The merger or consolidation of one or more
580 associations under a plan of merger or consolidation under
581 chapter 607 or chapter 617 shall not be considered a material or
582 adverse alteration of the proportionate voting interest
583 appurtenant to a parcel.

584 Section 12. Paragraph (t) is added to subsection (3) of
585 section 720.307, Florida Statutes, to read:

586 720.307 Transition of association control in a
587 community.--With respect to homeowners' associations:

588 (3) At the time the members are entitled to elect at least
589 a majority of the board of directors of the homeowners'
590 association, the developer shall, at the developer's expense,
591 within no more than 90 days deliver the following documents to
592 the board:

593 (t) The financial records, including financial statements
594 of the association, and source documents from the incorporation
595 of the association through the date of turnover. The records
596 shall be audited by an independent certified public accountant
597 for the period from the incorporation of the association or from
598 the period covered by the last audit, if an audit has been
599 performed for each fiscal year since incorporation. All
600 financial statements shall be prepared in accordance with
601 generally accepted accounting principles and shall be audited in
602 accordance with generally accepted auditing standards, as
603 prescribed by the Board of Accountancy, pursuant to chapter 473.
604 The certified public accountant performing the audit shall
605 examine to the extent necessary supporting documents and
606 records, including the cash disbursements and related paid
607 invoices to determine whether expenditures were for association
608 purposes and the billings, cash receipts, and related records of

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the association to determine whether the developer was charged
and paid the proper amounts of assessments. This paragraph
applies to associations with a date of incorporation after
December 31, 2006.

Section 13. Section 720.308, Florida Statutes, is amended
to read:

720.308 Assessments and charges.--

(1) ASSESSMENTS.--For any community created after October
1, 1995, the governing documents must describe the manner in
which expenses are shared and specify the member's proportional
share thereof. Assessments levied pursuant to the annual budget
or special assessment must be in the member's proportional share
of expenses as described in the governing document, which share
may be different among classes of parcels based upon the state
of development thereof, levels of services received by the
applicable members, or other relevant factors. While the
developer is in control of the homeowners' association, it may
be excused from payment of its share of the operating expenses
and assessments related to its parcels for any period of time
for which the developer has, in the declaration, obligated
itself to pay any operating expenses incurred that exceed the
assessments receivable from other members and other income of
the association. This section does not apply to an association,
no matter when created, if the association is created in a
community that is included in an effective development-of-
regional-impact development order as of the effective date of
this act, together with any approved modifications thereto.

(2) GUARANTEE OF COMMON EXPENSES.--

(a) Establishment of a guarantee.--If a guarantee of the
assessments of parcel owners is not included in the purchase
contracts or declaration, any agreement establishing a guarantee

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640 shall be effective only upon the approval of a majority of the
641 voting interests of the members other than the developer.
642 Approval shall be expressed at a meeting of the members voting
643 in person or by limited proxy or by agreement in writing without
644 a meeting if provided in the bylaws. Such guarantee shall meet
645 the requirements of this section.

646 (b) Guarantee period.--The period of time for the
647 guarantee shall be indicated by a specific beginning and ending
648 date or event.

649 1. The ending date or event shall be the same for all of
650 the members of a homeowners' association, including members in
651 different phases of the development.

652 2. The guarantee may provide for different intervals of
653 time during a guarantee period with different dollar amounts for
654 each such interval.

655 3. The guarantee may provide that after the initial stated
656 period the developer has an option to extend the guarantee for
657 one or more additional stated periods. The extension of a
658 guarantee is limited to extending the ending date or event;
659 therefore, the developer does not have the option of changing
660 the level of assessments guaranteed.

661 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
662 amount of the guarantee shall be an exact dollar amount for each
663 parcel identified in the declaration. Regardless of the stated
664 dollar amount of the guarantee, assessments charged to a member
665 shall not exceed the maximum obligation of the member based on
666 the total amount of the adopted budget and the member's
667 proportionate ownership share of the common elements.

668 (4) CASH FUNDING REQUIREMENTS DURING THE GUARANTEE.--The
669 cash payments required from the guarantor during the guarantee
670 period shall be determined as follows:

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(a) If at any time during the guarantee period the funds collected from member assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all assessments, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due.

(b) Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the assessments. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment-revenue-generating activity shall be considered separately. Any portion of the parcel assessment that is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

(5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula: the guarantor shall pay any deficits that exceed the guaranteed amount, less the total regular periodic assessments earned by the association from the members other than the guarantor during the guarantee period, regardless of whether the actual level charged was less than the maximum guaranteed amount.

(6) EXPENSES.--Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment

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702 revenues, shall not be included in the operating expenses. If
703 the expenses attributable to nonassessment revenues exceed
704 nonassessment revenues, only the excess expenses must be funded
705 by the guarantor. Interest earned on the investment of
706 association funds may be used to pay the income tax expense
707 incurred as a result of the investment; such expense shall not
708 be charged to the guarantor; and the net investment income shall
709 be retained by the association. Each such nonassessment-revenue-
710 generating activity shall be considered separately. Any portion
711 of the parcel assessment that is budgeted for designated capital
712 contributions of the association shall not be used to pay
713 operating expenses.

714 Section 14. Section 720.311, Florida Statutes, is amended
715 to read:

716 720.311 Dispute resolution.--

717 (1) The Legislature finds that alternative dispute
718 resolution has made progress in reducing court dockets and
719 trials and in offering a more efficient, cost-effective option
720 to litigation. The filing of any petition for ~~mediation or~~
721 arbitration or the serving of an offer for presuit mediation as
722 provided for in this section shall toll the applicable statute
723 of limitations. Any recall dispute filed with the department
724 pursuant to s. 720.303(10) shall be conducted by the department
725 in accordance with the provisions of ss. 718.112(2)(j) and
726 718.1255 and the rules adopted by the division. In addition, the
727 department shall conduct mandatory binding arbitration of
728 election disputes between a member and an association pursuant
729 to s. 718.1255 and rules adopted by the division. Neither
730 election disputes nor recall disputes are eligible for presuit
731 mediation; these disputes shall be arbitrated by the department.
732 At the conclusion of the proceeding, the department shall charge

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the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

(2) (a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be the subject of an offer filed with the department for presuit mandatory mediation served by an aggrieved party before the dispute is filed in court. Presuit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Disputes subject to presuit mediation under this section shall not include the collection of any assessment, fine, or other financial obligation, including attorney's fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. Also, in any dispute subject to presuit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit

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764 mediation requirements of this section. After any issues
765 regarding emergency or temporary relief are resolved, the court
766 may either refer the parties to a mediation program administered
767 by the courts or require mediation under this section. An
768 arbitrator or judge may not consider any information or evidence
769 arising from the presuit mediation proceeding except in a
770 proceeding to impose sanctions for failure to attend a presuit
771 mediation session or with the parties' agreement in a proceeding
772 seeking to enforce the agreement. Persons who are not parties to
773 the dispute may not attend the presuit mediation conference
774 without the consent of all parties, except for counsel for the
775 parties and a corporate representative designated by the
776 association. When mediation is attended by a quorum of the
777 board, such mediation is not a board meeting for purposes of
778 notice and participation set forth in s. 720.303. An aggrieved
779 party shall serve on the responding party a written offer to
780 participate in presuit mediation in substantially the following
781 form:

782
783 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

784
785 The alleged aggrieved party, _____, hereby
786 offers to _____, as the responding party,
787 to enter into presuit mediation in connection with the
788 following dispute, which by statute is of a type that
789 is subject to presuit mediation:

790
791 (List specific nature of the dispute or disputes to be
792 mediated and the authority supporting a finding of a
793 violation as to each dispute.)
794

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Pursuant to section 720.311, Florida Statutes, this offer to resolve the dispute through presuit mediation is required before a lawsuit can be filed concerning the dispute. Pursuant to the statute, the aggrieved party is hereby offering to engage in presuit mediation with a neutral third-party mediator in order to attempt to resolve this dispute without court action, and the aggrieved party demands that you likewise agree to this process. If you fail to agree to presuit mediation, or if you agree and later fail to follow through with your agreement to mediate, suit may be brought against you without further warning.

The process of mediation involves a supervised negotiation process in which a trained, neutral third-party mediator meets with both parties and assists them in exploring possible opportunities for resolving part or all of the dispute. The mediation process is a voluntary one. By agreeing to participate in presuit mediation, you are not bound in any way to change your position or to enter into any type of agreement. Furthermore, the mediator has no authority to make any decisions in this matter or to determine who is right or wrong and merely acts as a facilitator to ensure that each party understands the position of the other party and that all reasonable settlement options are fully explored. All mediation communications are confidential under the Mediation Confidentiality and Privilege Act pursuant to sections 44.401-44.406, Florida Statutes, and a mediation participant may not disclose a mediation communication to a person other

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826 than a mediation participant or a participant's
827 counsel.

828
829 If an agreement is reached, it shall be reduced to
830 writing and becomes a binding and enforceable
831 commitment of the parties. A resolution of one or more
832 disputes in this fashion avoids the need to litigate
833 these issues in court. The failure to reach an
834 agreement, or the failure of a party to participate in
835 the process, results in the mediator's declaring an
836 impasse in the mediation, after which the aggrieved
837 party may proceed to court on all outstanding,
838 unsettled disputes.

839
840 The aggrieved party has selected and hereby lists
841 three certified mediators who we believe to be neutral
842 and qualified to mediate the dispute. You have the
843 right to select any one of these mediators. The fact
844 that one party may be familiar with one or more of the
845 listed mediators does not mean that the mediator
846 cannot act as a neutral and impartial facilitator. Any
847 mediator who cannot act in this capacity ethically
848 must decline to accept engagement. The mediators that
849 we suggest, and their current hourly rates, are as
850 follows:

851
852 (List the names, addresses, telephone numbers, and
853 hourly rates of the mediators. Other pertinent
854 information about the background of the mediators may
855 be included as an attachment.)

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858 You may contact the offices of these mediators to
859 confirm that the listed mediators will be neutral and
860 will not show any favoritism toward either party. The
861 names of certified mediators may be found through the
862 office of the clerk of the circuit court for this
863 circuit.

864 If you agree to participate in the presuit mediation
865 process, the statute requires that each party is to
866 pay one-half of the costs and fees involved in the
867 presuit mediation process unless otherwise agreed by
868 all parties. An average mediation may require 3 to 4
869 hours of the mediator's time, including some
870 preparation time, and each party would need to pay
871 one-half of the mediator's fees as well as his or her
872 own attorney's fees if he or she chooses to employ an
873 attorney in connection with the mediation. However,
874 use of an attorney is not required and is at the
875 option of each party. The mediator may require the
876 advance payment of some or all of the anticipated
877 fees. The aggrieved party hereby agrees to pay or
878 prepay one-half of the mediator's estimated fees and
879 to forward this amount or such other reasonable
880 advance deposits as the mediator may require for this
881 purpose. Any funds deposited will be returned to you
882 if these are in excess of your share of the fees
883 incurred.

884
885 If you agree to participate in presuit mediation in
886 order to attempt to resolve the dispute and thereby
887 avoid further legal action, please sign below and

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888 clearly indicate which mediator is acceptable to you.
889 We will then ask the mediator to schedule a mutually
890 convenient time and place for the mediation conference
891 to be held. The mediation conference must be held
892 within 90 days after the date of this letter unless
893 extended by mutual written agreement. In the event
894 that you fail to respond within 20 days after the date
895 of this letter, or if you fail to agree to at least
896 one of the mediators that we have suggested and to pay
897 or prepay to the mediator one-half of the costs
898 involved, the aggrieved party will be authorized to
899 proceed with the filing of a lawsuit against you
900 without further notice and may seek an award of
901 attorney's fees or costs incurred in attempting to
902 obtain mediation.

903
904 Should you wish, you may also elect to waive presuit
905 mediation so that this matter may proceed directly to
906 court.

907
908 Therefore, please give this matter your immediate
909 attention. By law, your response must be mailed by
910 certified mail, return receipt requested, with an
911 additional copy being sent by regular first-class mail
912 to the address shown on this offer.

913
914 _____
915 _____
916

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RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
CHOICE.

AGREEMENT TO MEDIATE

The undersigned hereby agrees to participate in
presuit mediation and agrees to the following mediator
or mediators as acceptable to mediate this dispute:

(List acceptable mediator or mediators.)

I/we further agree to pay or prepay one-half of the
mediator's fees and to forward such advance deposits
as the mediator may require for this purpose.

Signature of responding party #1

Signature of responding party #2 (if applicable) (if
property is owned by more than one person, all owners
must sign)

WAIVER OF MEDIATION

The undersigned hereby waives the right to participate
in presuit mediation of the dispute listed above and
agrees to allow the aggrieved party to proceed in
court on such matters.

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948 _____
949 Signature of responding party #1

950
951 _____
952 Signature of responding party #2 (if applicable) (if
953 property is owned by more than one person, all owners
954 must sign)

955
956 (b) Service of the statutory offer to participate in
957 presuit mediation shall be effected by sending a letter in
958 substantial conformity with the above form by certified mail,
959 return receipt requested, with an additional copy being sent by
960 regular first-class mail, to the address of the responding party
961 as it last appears on the books and records of the association.
962 The responding party shall have 20 days from the date of the
963 mailing of the statutory offer to serve a response to the
964 aggrieved party in writing. The response shall be served by
965 certified mail, return receipt requested, with an additional
966 copy being sent by regular first-class mail, to the address
967 shown on the statutory offer. In the alternative, the responding
968 party may waive mediation in writing. Notwithstanding the
969 foregoing, once the parties have agreed on a mediator, the
970 mediator may reschedule the mediation for a date and time
971 mutually convenient to the parties. ~~The department shall conduct~~
972 ~~the proceedings through the use of department mediators or refer~~
973 ~~the disputes to private mediators who have been duly certified~~
974 ~~by the department as provided in paragraph (c).~~ The parties
975 shall share the costs of presuit mediation equally, including
976 the fee charged by the mediator, if any, unless the parties
977 agree otherwise, and the mediator may require advance payment of
978 its reasonable fees and costs. The failure of any party to

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respond to a demand or response, to agree upon a mediator, to
980 make payment of fees and costs within the time established by
981 the mediator, or to appear for a scheduled mediation session
982 shall operate as an impasse in the presuit mediation by such
983 party, entitling the other party to proceed in court and to seek
984 an award of the costs and fees associated with the mediation.
985 Additionally, if any presuit mediation session cannot be
986 scheduled and conducted within 90 days after the offer to
987 participate in mediation was filed, an impasse shall be deemed
988 to have occurred unless both parties agree to extend this
989 deadline. If a department mediator is used, the department may
990 charge such fee as is necessary to pay expenses of the
991 mediation, including, but not limited to, the salary and
992 benefits of the mediator and any travel expenses incurred. The
993 petitioner shall initially file with the department upon filing
994 the disputes, a filing fee of \$200, which shall be used to
995 defray the costs of the mediation. At the conclusion of the
996 mediation, the department shall charge to the parties, to be
997 shared equally unless otherwise agreed by the parties, such
998 further fees as are necessary to fully reimburse the department
999 for all expenses incurred in the mediation.

1000 (c)(b) If presuit mediation as described in paragraph (a)
1001 is not successful in resolving all issues between the parties,
1002 the parties may file the unresolved dispute in a court of
1003 competent jurisdiction or elect to enter into binding or
1004 nonbinding arbitration pursuant to the procedures set forth in
1005 s. 718.1255 and rules adopted by the division, with the
1006 arbitration proceeding to be conducted by a department
1007 arbitrator or by a private arbitrator certified by the
1008 department. If all parties do not agree to arbitration
1009 proceedings following an unsuccessful mediation, any party may

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1010 file the dispute in court. A final order resulting from
1011 nonbinding arbitration is final and enforceable in the courts if
1012 a complaint for trial de novo is not filed in a court of
1013 competent jurisdiction within 30 days after entry of the order.
1014 As to any issue or dispute that is not resolved at presuit
1015 mediation, and as to any issue that is settled at presuit
1016 mediation but is thereafter subject to an action seeking
1017 enforcement of the mediation settlement, the prevailing party in
1018 any subsequent arbitration or litigation proceeding shall be
1019 entitled to seek recovery of all costs and attorney's fees
1020 incurred in the presuit mediation process.

1021 ~~(d)-(c) The department shall develop a certification and~~
1022 ~~training program for private mediators and private arbitrators~~
1023 ~~which shall emphasize experience and expertise in the area of~~
1024 ~~the operation of community associations. A mediator or~~
1025 ~~arbitrator shall be certified to conduct mediation or~~
1026 ~~arbitration under this section by the department only if he or~~
1027 ~~she has been certified as a circuit court civil mediator or~~
1028 ~~arbitrator, respectively, pursuant to the requirements~~
1029 ~~established attended at least 20 hours of training in mediation~~
1030 ~~or arbitration, as appropriate, and only if the applicant has~~
1031 ~~mediated or arbitrated at least 10 disputes involving community~~
1032 ~~associations within 5 years prior to the date of the~~
1033 ~~application, or has mediated or arbitrated 10 disputes in any~~
1034 ~~area within 5 years prior to the date of application and has~~
1035 ~~completed 20 hours of training in community association~~
1036 ~~disputes. In order to be certified by the department, any~~
1037 ~~mediator must also be certified by the Florida Supreme Court.~~
1038 ~~The department may conduct the training and certification~~
1039 ~~program within the department or may contract with an outside~~
1040 ~~vendor to perform the training or certification. The expenses of~~

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~~operating the training and certification and training program shall be paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection and by the training fees.~~

(e)~~(d)~~ The presuit mediation procedures provided by this subsection may be used by a Florida corporation responsible for the operation of a community in which the voting members are parcel owners or their representatives, in which membership in the corporation is not a mandatory condition of parcel ownership, or which is not authorized to impose an assessment that may become a lien on the parcel.

~~(3) The department shall develop an education program to assist homeowners, associations, board members, and managers in understanding and increasing awareness of the operation of homeowners' associations pursuant to this chapter and in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Such education program may include the development of pamphlets and other written instructional guides, the holding of classes and meetings by department employees or outside vendors, as the department determines, and the creation and maintenance of a website containing instructional materials. The expenses of operating the education program shall be initially paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection.~~

Section 15. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to community associations; creating s. 712.11, F.S.; providing for the revival of certain declarations that have been extinguished; amending s. 718.110, F.S.; revising provisions relating to the amendment of declarations; providing legislative findings and a finding of compelling state interest; providing criteria for consent to an amendment; requiring notice regarding proposed amendments to mortgagees; providing criteria for notification; amending s. 718.112, F.S.; revising implementation date for retrofitting of common areas with a sprinkler system; amending s. 718.114, F.S.; providing that certain leaseholds, memberships, or other possessory or use interests shall be considered a material alteration or substantial addition to certain real property; amending s. 718.404, F.S.; providing retroactive application of provisions relating to mixed-use condominiums; amending s. 720.302, F.S.; revising governing provisions relating to corporations that operate residential homeowners' associations; amending s. 720.303, F.S.; revising provisions relating to open meetings of the association; requiring the budget to provide for annual operating expenses; authorizing the budget to include reserve accounts for capital expenditures and deferred maintenance; providing the amount to be reserved; authorizing the association to adjust replacement reserve assessments annually; authorizing the developer to vote to waive the reserves or reduce the funding of reserves for a certain period; revising provisions relating to financial

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

reporting; revising time periods in which the association must complete its reporting; repealing s. 720.303(2), F.S., as amended, relating to board meetings, to remove conflicting versions of that subsection; creating s. 720.3035, F.S.; providing for architectural control covenants and parcel owner improvements; authorizing the review and approval of plans and specifications; providing limitations; providing rights and privileges for parcel owners as set forth in the declaration of covenants; amending s. 720.305, F.S.; providing that, where a member is entitled to collect attorney's fees against the association, the member may also recover additional amounts as determined by the court; amending s. 720.306, F.S.; providing that certain mergers or consolidations of an association shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel; revising provisions relating to items that members and parcel owners may address at membership meetings; amending s. 720.307, F.S.; requiring developers to deliver financial records to the board in any transition of association control to members; requiring certain information to be included in the records and for the records to be prepared in a specified manner; amending s. 720.308, F.S.; providing that a guarantee of common expenses shall be effective under certain circumstances; requiring the guarantee to meet certain requirements; authorizing the guarantee to provide certain requirements; requiring the stated dollar amount of the guarantee to be an exact dollar amount for each parcel identified in the declaration; providing payments required from the guarantor to be determined in a certain

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

manner; providing a formula to determine the guarantor's total financial obligation to the association; providing that certain expenses incurred in the production of certain revenues shall not be included in the common expenses; amending s. 720.311, F.S.; revising provisions relating to dispute resolution; providing that the filing of any petition for arbitration or the serving of an offer for presuit mediation shall toll the applicable statute of limitations; providing that certain disputes between an association and a parcel owner shall be subject to presuit mediation; revising provisions to conform; providing that temporary injunctive relief may be sought in certain disputes subject to presuit mediation; authorizing the court to refer the parties to mediation under certain circumstances; requiring the aggrieved party to serve on the responding party a written offer to participate in presuit mediation; providing a form for such offer; providing that service of the offer is effected by the sending of such an offer in a certain manner; providing that the prevailing party in any subsequent arbitration or litigation proceedings is entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process; requiring the mediator or arbitrator to meet certain certification requirements; removing a requirement relating to development of an education program to increase awareness of the operation of homeowners' associations and the use of alternative dispute resolution techniques; providing effective dates.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment 1 to Amendment No. 1

Bill No. 391 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION X (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Judiciary Appropriations
Representative(s) Domino offered the following:

**Amendment to Amendment (1) by Representative Domino (with
title amendment)**

Between line(s) 11 and 12 and insert:

Section 2. Subsection (5) is added to section 718.106,
Florida Statutes, to read:

718.106 Condominium parcels; appurtenances; possession and
enjoyment.—

(5) A local ordinance or regulation may not establish any
limitation on the ability of unit owners or an association to
permit guests, licensees, members, or invitees to use or access
their units or common elements for the purpose of accessing a
public beach or private beach adjacent to the condominium.

===== T I T L E A M E N D M E N T =====

Remove line(s) 1077 and insert:
declarations that have been extinguished; amending s. 718.106,
F.S.; prohibiting local ordinances that limit the access of
certain persons to beaches that adjoin condominiums; amending s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment 2 to Amendment No. 1

Bill No. 391 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION X (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Judiciary Appropriations
Representative(s) Domino offered the following:

**Amendment to Amendment (1) by Representative Domino (with
directory and title amendments)**

Between line(s) 194 and 195 insert:

Section 6. Subsections (9)-(27) of section 719.103, Florida
Statutes, are renumbered as subsections (10)-(28), respectively,
and a subsection (9) is added to that section, to read:

719.103 Definitions.--As used in this chapter:

(9) "Equity facilities club" means a club comprised of
recreational facilities in which proprietary membership
interests are sold to individuals, which membership interests
entitle the individuals to use certain physical facilities owned
by the equity club. Such physical facilities cannot include a
residential unit or accommodation. For purposes of this
definition, the term "accommodation" shall include, but is not
limited to, any apartment, residential cooperative unit,
residential condominium unit, cabin, lodge, hotel or motel room,
or any other accommodation designed for overnight occupancy for
one or more individuals.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment 2 to Amendment No. 1

Section 7. Section 719.507, Florida Statutes, is amended to read:

719.507 Zoning and building laws, ordinances, and regulations.--All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the cooperative or equity facilities club form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the cooperative or equity facilities club form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the cooperative form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

===== T I T L E A M E N D M E N T =====

Remove line(s) 1091 and insert:

condominiums; amending s. 719.103; defining the term "equity facilities club"; amending s. 719.507; requiring that laws, ordinances, and regulations governing buildings and improvements

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment 2 to Amendment No. 1

on equity facilities clubs be equally applicable to such
buildings and improvements; amending s. 720.302, F.S.; revising

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COMMITTEE MEETING REPORT

Judiciary Appropriations Committee

4/4/2006 4:00:00PM or Upon Adjournment of the Fiscal Council

Location: 28 HOB

HB 637 : Consumer Protection

<input checked="" type="checkbox"/> Favorable					
	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Edward Bullard	X				
Mark Mahon				X	
Juan-Carlos Planas	X				
Dennis Ross			X		
John Seller	X				
Jeffrey Kottkamp (Chair)	X				
Total Yeas: 4		Total Nays: 0			

Committee meeting was reported out: Tuesday, April 04, 2006 6:26:51PM

COMMITTEE MEETING REPORT

Judiciary Appropriations Committee

4/4/2006 4:00:00PM or Upon Adjournment of the Fiscal Council

Location: 28 HOB

HB 1099 CS : Court Actions Involving Families

<input checked="" type="checkbox"/> Favorable					
	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Edward Bullard	X				
Mark Mahon				X	
Juan-Carlos Planas	X				
Dennis Ross			X		
John Seller	X				
Jeffrey Kottkamp (Chair)	X				
Total Yeas: 4		Total Nays: 0			

Committee meeting was reported out: Tuesday, April 04, 2006 6:26:51PM

COMMITTEE MEETING REPORT

Judiciary Appropriations Committee

4/4/2006 4:00:00PM or Upon Adjournment of the Fiscal Council

Location: 28 HOB

Summary:

Judiciary Appropriations Committee

Tuesday April 04, 2006 04:00 pm

HB 65 CS	Favorable With Committee Substitute	Yeas: 4 Nays: 0
HB 391 CS	Favorable With Committee Substitute	Yeas: 4 Nays: 0
HB 637	Favorable	Yeas: 4 Nays: 0
HB 1099 CS	Favorable	Yeas: 4 Nays: 0

Committee meeting was reported out: Tuesday, April 04, 2006 6:26:51PM